

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 18-40752

Chapter 7

Mark E. Herman,

Debtor.

**NOTICE OF EXPEDITED HEARING AND MOTION TO APPROVE AMENDED AND
CLARIFIED SETTLEMENT AGREEMENT**

TO: The parties-in-interest as provided under Local Rule 9013-3(a)(2).

1. Nauni Manty, Trustee, moves the Court for the relief requested herein and gives notice of hearing.

2. The Court will hold an **expedited hearing** on this motion before the Honorable Kathleen H. Sanberg, on Wednesday, December 9, 2020 at 9:30 a.m., in Courtroom 8W, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Due to the expedited nature of this motion, any response to this motion must be filed and served not later than 2 hours before the hearing date and time. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rules 2002 and 5005 of the Federal Rules of Bankruptcy Procedure, and Local Rules 1070-1, 9006-1 and 9013-3. This is a core proceeding.

5. The relief sought in this motion is based upon Federal Rules of Bankruptcy Procedure 2002, 6004, 9007, and Local Rules 6004-1 and 9013-3.

6. On March 15, 2018, Debtor filed a voluntary petition for relief under Chapter 7 of

the United States Code in the United States Bankruptcy Court for the District of Minnesota. The Trustee is the duly appointed trustee of the Debtor's bankruptcy estate.

7. In his bankruptcy schedules, Debtor did not list an interest in any artwork other than to claim an interest in royalties. Further, the Debtor falsely stated at his first meeting of creditors that he had transferred his interest in certain artwork to Senn for the sum of \$1.00 which was false but led to the Trustee commencing Adv. No. 18-4134 against Senn (the “**Adversary Proceeding**”). The Adversary Proceeding was settled by Senn agreeing to purchase the art that was property of the bankruptcy estate as described in the settlement agreement executed on July 9, 2019 (the “**Settlement Agreement**”), and approved by the Court on June 27, 2019 [docket item 47], as “digital artwork created by the Debtor pre-petition is estate property” (defined as “**Artwork**”). No objections were made by the Debtor or other party to the settlement.

8. Senn has paid the Trustee the sum of \$52,500.00 to acquire the Artwork “along with all rights, title, and interest to the Artwork.” Additionally, the Trustee filed a motion seeking to sell the Artwork free and clear of claims and interests which was approved by the Court on June 26, 2019.

9. Senn has been marketing and selling the Artwork as her livelihood. Beginning around late November 2020, Debtor contacted the web sites used by Senn to sell the art, such as Etsy and Shopify, and informed them that he held copyrights to the Artwork being sold and that they should cease and desist from allowing Senn to sell on those platforms. A number of platforms have ceased Senn's marketing of the Artwork due to wrongful interference by the Debtor.

10. When confronted by counsel for Senn, counsel for the Debtor claimed that (a) the Trustee had not transferred copyrights in the Artwork to Senn and that, (b) since the copyrights had not been administered by the Trustee, they reverted back to the Debtor. Neither is true and

the Trustee and Senn disagree with the Debtor's assessment of the law and facts. The Trustee and Senn further agree that the Artwork and any copyrights thereof were estate property and sold to Senn, who has now acquired every interest whatsoever in the Artwork and that Debtor has no interest, at all.

11. It does not appear that the Debtor ever registered any copyrights in the Artwork he may have had and, regardless, he did not schedule copyrights in the Artwork in his bankruptcy case. If such copyrights exist, they are estate property and were sold to Senn. The Debtor has no interest in those copyrights should they exist.

12. The Trustee and Senn desire to clarify the bankruptcy estate property which was transferred to Senn in furtherance of the prior Settlement Agreement and sale. Neither the Trustee nor Senn believe that the Debtor has an interest in any of his prepetition art or associated intellectual property as all such interests have been transferred to Senn by way of Settlement Agreement and sale.

13. The Amended and Clarified Settlement Agreement for which expedited approval is sought is intended to clarify the property interests transferred to Senn. A copy of the Amended and Clarified Settlement Agreement is attached as Exhibit 1 and incorporated herein.

14. If the Amended and Clarified Settlement Agreement is not approved by the Court, then the copyrights to the Artwork remain the property of Senn, or are bankruptcy estate property, and do not belong to the Debtor.

15. Expedited relief is needed in this case to clarify the rights acquired by Senn so that she may again market the Artwork. Debtor's actions have caused Senn great harm during what is typically her best season for selling Artwork. In fact, Debtor's actions may have been timed to achieve this outcome. Expedited relief is needed to allow Senn to operate her business once again.

Senn believes that it is necessary to have specific provisions contained in the court order to remedy the situation with the various sale platforms.

16. The Trustee gives notice that she, Senn or the Debtor may be called to testify at any final hearing as to this matter.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order:

1. Granting the Trustee's request for expedited relief;
2. Approving the Amended and Clarified Settlement Agreement described herein; and
3. Granting such other and further relief as the court deems just and equitable.

MANTY & ASSOCIATES, P.A.

Dated: December 3, 2020

/e/ Mary F. Sieling

Nauni Manty (230352)

Mary Sieling (389893)

150 South Fifth Street, Suite 3125

Minneapolis, MN 55402

Phone: (612) 465-0901

Email: mary@mantylaw.com

Attorneys for Nauni Manty, Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 18-40752

Chapter 7

Mark E. Herman,

Debtor.

AMENDED AND CLARIFIED SETTLEMENT AGREEMENT

This Amended and Clarified Settlement Agreement (the “**Agreement**”) is made and entered into this ____ day of December 2020, by and between Nauni Manty, in her capacity as chapter 7 trustee (“**Trustee**”) for the bankruptcy estate of Mark E. Herman (“**Debtor**”), and Amber Senn and Numeric Trading Company (collectively, “**Senn**”).

R E C I T A L S

WHEREAS, on March 15, 2018, Debtor filed a voluntary petition for relief under Chapter 7 of the United States Code in the United States Bankruptcy Court for the District of Minnesota; and,

WHEREAS, the Trustee is the duly appointed trustee of the Debtor’s bankruptcy estate; and,

WHEREAS, in his bankruptcy schedules, Debtor did not list an interest in any artwork other than to claim an interest in royalties; and,

WHEREAS, Debtor falsely stated at his first meeting of creditors that he had transferred his interest in certain artwork to Senn for the sum of \$1.00 which was false but led to the Trustee commencing Adv. No. 18-4134 against Senn (the “**Adversary Proceeding**”); and,

WHEREAS, the Adversary Proceeding was settled by Senn agreeing to purchase the art that was property of the bankruptcy estate as described in the a settlement agreement executed on

July 9, 2019 (the “**Settlement Agreement**”), and approved by the Court on June 27, 2019 [docket item 47], as “digital artwork created by the Debtor pre-petition is estate property” (defined as “**Artwork**”); and,

WHEREAS, Senn has paid the Trustee the sum of \$52,500.00 to acquire the Artwork “along with all rights, title, and interest to the Artwork;” and,

WHEREAS, in addition to the Settlement Agreement, the Trustee filed a motion seeking to sell the Artwork free and clear of claims and interests which was approved by the Court on June 26, 2019 [docket item 46]; and,

WHEREAS, Senn has been marketing and selling the Artwork as her livelihood; and,

WHEREAS, beginning around late November 2020, Debtor contacted the web sites used by Senn to sell the art, such as Etsy and Shopify, and informed them that he held copyrights to the Artwork being sold and that they should cease and desist from allowing Senn to sell on those platforms; and,

WHEREAS, a number of platforms have ceased Senn’s marketing of the Artwork due to wrongful interference by the Debtor; and,

WHEREAS, when confronted by counsel for Senn, counsel for the Debtor claimed that (a) the Trustee had not transferred copyrights in the Artwork to Senn and that, (b) since the copyrights had not been administered by the Trustee, they reverted back to the Debtor; and,

WHEREAS, the Trustee and Senn disagree with the Debtor’s assessment of the law and facts and further agree that Senn has acquired every interest whatsoever in the Artwork and that Debtor has no interest, at all, in the same; and,

WHEREAS, it does not appear to the parties hereto that the Debtor ever registered any copyrights in the Artwork he may have had and, regardless, he did not schedule copyrights in the Artwork in his bankruptcy case; and,

WHEREAS, the Trustee and Senn desire to clarify the bankruptcy estate property which was transferred to Senn in furtherance of the prior Settlement Agreement and sale; and,

WHEREAS, neither the Trustee nor Senn believe that the Debtor has an interest in any of his prepetition art or associated intellectual property as all such interests have been transferred to Senn by way of Settlement Agreement and sale; and,

WHEREAS, this Amended and Clarified Settlement Agreement is intended to clarify the property interests transferred to Senn.

NOW THEREFORE, the parties hereby stipulate and agree as follows:

1. The parties' intentions in the prior Settlement Agreement and Sale were to transfer all rights in the Artwork to Senn of every kind whatsoever, including any copyrights and renewals or extensions thereto. However, due to the actions of the Debtor, the parties agree to clarify the transfer as follows:

- a. The art transferred by the bankruptcy estate includes but is not limited to, all digital art created by the Debtor up to the date of the commencement of his bankruptcy case, March 15, 2018. The specific art transferred to Senn includes, but is not limited to, the art listed on Exhibit A hereto. This shall be referred to as the "**Clarified Artwork.**"
- b. All rights already transferred by the bankruptcy estate to Senn are also included within the definition of Clarified Artwork.
- c. The transfer of the Clarified Artwork by the bankruptcy estate to Senn includes all intellectual property rights, including copyrights, including rights of extensions and renewals thereof, held by the Debtor in the Clarified Artwork.
- d. The Trustee hereby conveys, transfers and irrevocably assigns to Senn all rights, title and interest to the Clarified Artwork, including but not limited to, the entire and exclusive copyrights under federal and state copyrights laws, in the United

States and all jurisdictions outside the United States, its common law copyrights and all other intellectual property rights associated and subsisting in the Clarified Artwork.

- e. Senn shall be the exclusive owner of the Clarified Artwork and of the copyright in the Clarified Artwork and shall have the exclusive right to secure registration of the copyright in the Clarified Artwork internationally. No rights in the Clarified Artwork or in the copyright in the Clarified Artwork, shall be retained by the Trustee or the Debtor, nor shall there be any reversion of those rights to the Trustee or the Debtor in the future.
- f. The Trustee hereby agrees that the exclusive rights assigned and transferred to Senn under state and federal copyright laws shall include the right to reproduce the Clarified Artwork; the right to prepare derivative works based on the Clarified Artwork; the right to distribute copies to the public of the Clarified Artwork; the right to display the Clarified Artwork publicly, the right to alter, exploit and make changes to the Clarified Artwork, including any and all other privileges and rights to the Clarified Artwork attributed to a copyright owner.
- g. The Trustee hereby conveys, transfers and irrevocably assigns to Senn the ownership any material object in its tangible form, in which the copyrightable Clarified Artwork is embodied. The Trustee acknowledges that any material object is the Clarified Artwork in its tangible form.
- h. To the extent that such exist, the Trustee hereby conveys, transfers and irrevocably assigns to Senn her full term and renewal term copyright rights in the under federal and state copyright laws with respect to the Clarified Artwork.
- i. The Trustee agrees that this assignment and transfer of copyrights subsisting in the Clarified Artwork, will remain in effect for the entire duration of such copyrights and will include all exclusive rights, interest and ownership under the copyright laws.
- j. The parties agree that the any rights which were held by the Debtor as of the commencement of his bankruptcy case related to the Clarified Artwork, or associated therewith, have been transferred to Senn and that the Debtor has no right or interest in the Clarified Artwork.

2. While this Amended and Clarified Settlement Agreement clarifies the rights transferred by the bankruptcy estate to Senn, it does not mean that the rights have not already been transferred to Senn by way of the prior sale and Settlement Agreement.

3. The parties agree that, for many reasons, including the prior Settlement Agreement and sale, and that because Debtor never scheduled an interest in any art or intellectual property, that the Debtor has no interest whatsoever in the Clarified Artwork.

4. This Amended and Clarified Settlement Agreement is subject to the approval of the U.S. Bankruptcy Court but in no way diminishes or alters the prior the sale or Settlement Agreement.

5. To the extent that any additional rights are being transferred to Senn by this Amended and Clarified Settlement Agreement, those rights are being sold “as is” without any representations or warranties by the Trustee.

6. The parties represent and warrant that they have not transferred or assigned or otherwise sold any portion of their claims, interests, defenses or causes of action of any nature whatsoever that each party is releasing or assigning hereunder and that each such party is the sole owner of all such respective claims, interests, defenses or causes of action.

7. Each party hereto acknowledges and represents that he or she is represented by a licensed attorney or has had the opportunity to consult with an attorney of his or her choice with respect to this Amended and Clarified Settlement Agreement.

8. Neither this Amended and Clarified Settlement Agreement, any provision in this Amended and Clarified Settlement Agreement, any document referred to in this Amended and Clarified Settlement Agreement nor any action taken to carry out this Amended and Clarified Settlement Agreement is or may be construed as or may be used against any of the parties hereto or third parties as an admission or concession on any point of fact or law, of any alleged fault, wrongdoing or liability whatsoever. All parties acknowledge and agree that this Amended and

Clarified Settlement Agreement has been entered into solely for purposes of clarifying prior transactions between the parties.

9. This Amended and Clarified Settlement Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Minnesota.

10. This Amended and Clarified Settlement Agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument. This Agreement may be executed by exchange of facsimile or electronic copies of original executed signatures and each such copy shall be deemed to be an original executed signature.

Date: December ____, 2020

Nauni Manty, in her capacity as chapter 7 trustee

Date: December ____, 2020

Amber Senn

NUMERIC TRADING COMPANY

Date: December ____, 2020

By: _____
Amber Senn
Its President

Mark Herman Art Catalog

-To March 2018

Contents

Kill Kancer

A collection of rock poster inspired Cancer prevention posters

Landmark Series

This collection includes art depicting local landmarks in MN, CA, WI, OR, NY, FL

Bean Ball

A collection of black & white baseball players at the moment of baseball impact

City Line

This collection is a a grittier black & white based set of local city landmarks in Minneapolis

Misc

Various other artworks including Kill Kancer charity rock-concert style posters

Bird House Series

A set of iconic Minneapolis buildings in various states of dilapidation

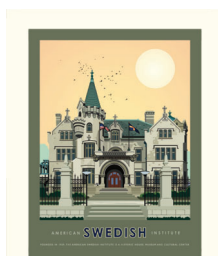
Landmark Collection - MN



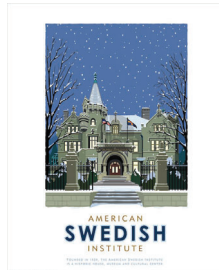
American Swedish Institute Fall



American Swedish Institute Summer



American Swedish Institute Yellow



American Swedish Institute Winter



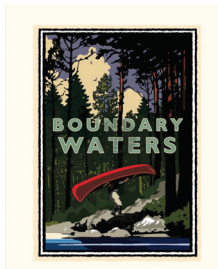
Bde Maka Ska



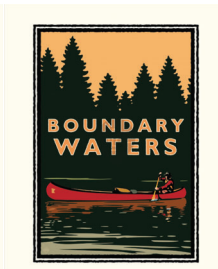
The Bibelot Shops



Boreal Forest

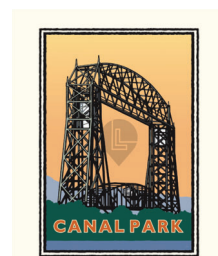


Boundary Waters Portage

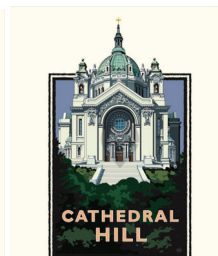


Boundary Waters Canoe

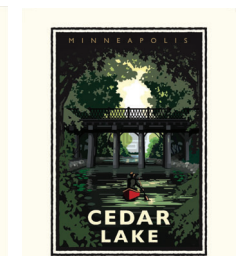
Landmark Series - MN



Canal Park



Cathedral Hill



Cedar Lake



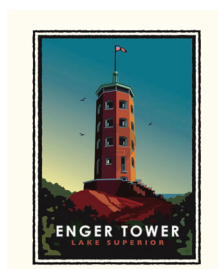
Como Lake



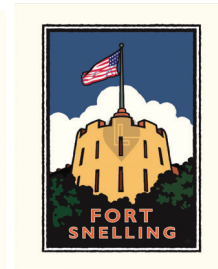
Como Park Conservatory



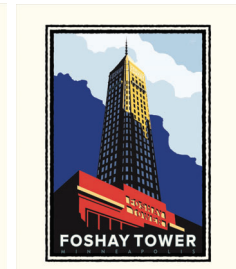
Children's Theater Company



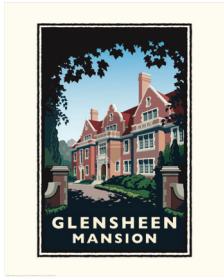
Enger Tower Lake Superior



Fort Snelling



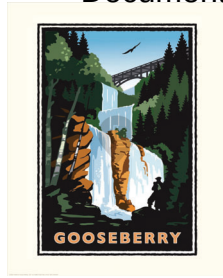
Foshay Tower



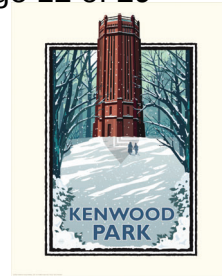
Glensheen Mansion Summer



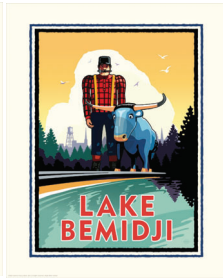
Glensheen Mansion Winter



Gooseberry Falls



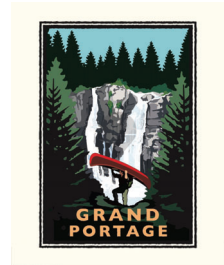
Kenwood Park Winter



Lake Bemidji



Lake Calhoun



Grand Portage



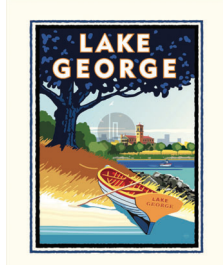
Guthrie Theater



Guthrie Theater Winter



Lake Geneva



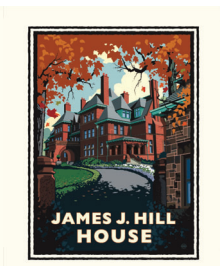
Lake George



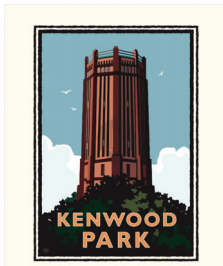
Lake Harriet Pavilion



Independence Day



James J. Hill House



Kenwood Park



Lake Harriet Rose Garden



Lake Harriet Sailboat



Lake Harriet Trolley

Landmark Series - MN



Lake Hiawatha



Lake Hubert

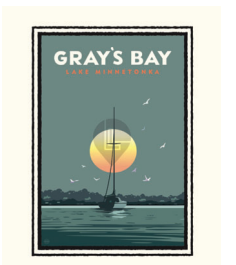


Lake Independence

Landmark Series - MN



Lake Minnetonka Express Boat



Lake Minnetonka Gray's Bay



Lake Irving



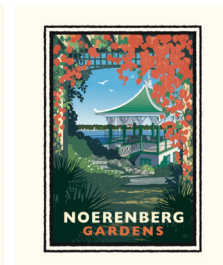
Lake Jefferson



Lake Mille Lacs



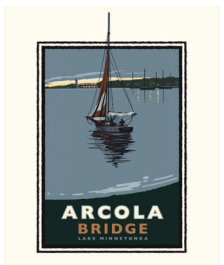
Lake Minnetonka Moonlight



Lake Minnetonka Noerenberg Gardens



Lake Minnetonka Regatta



Lake Minnetonka Arcola Bridge



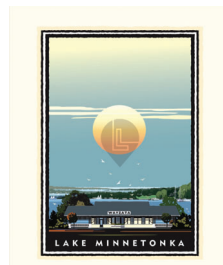
Lake Minnetonka Big Island



Lake Minnetonka Excelsior Ferry



Lake Minnetonka Sailing



Lake Minnetonka Stationview



Lake Minnetonka Wayzata Bay

Landmark Series - MN



Grandview Lodge



Lake Minnetonka Yacht Clubs



Lake Minnewashta



Lake of the Woods



Lake Pepin



Lake Phalen



Lake Nokomis Bridge



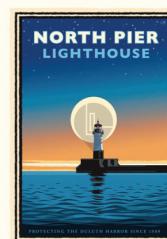
Lake Nokomis Dive



Lake of the Clouds



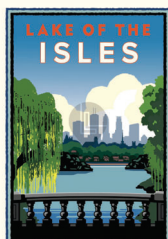
Lake Ripley



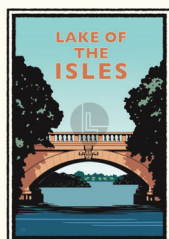
Lake Superior North Pier



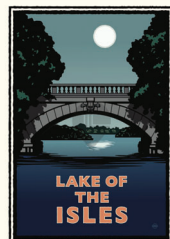
Lake Superior North Shore



Lake of the Isles City View



Lake of the Isles Day



Lake of the Isles Night



Lake Superior Sailing



Lake Superior Starry Night

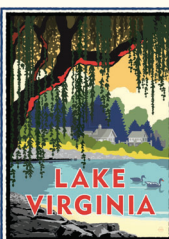


Lake Superior Woods

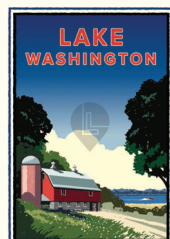
Landmark Series - MN



Lake Vermillion



Lake Virginia



Lake Washington



Minnehaha Creek



Minnehaha Falls



Minnesota State Capitol



Lake Winona



Minneapolis Institute of Art



Mill City Museum Day



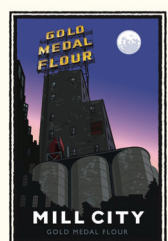
Minnesota State Fair Blue



Minnesota State Fair Red



Minnesota State Fair Yellow



Mill City Museum Night



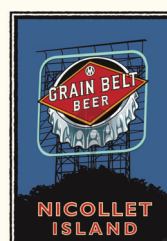
Mill City Ruins



Minneapolis Landmarks 9-Up



Mall of America



Nicollet Island



Olympic Hills Clubhouse

Landmark Series - MN



Olympic Hills Field



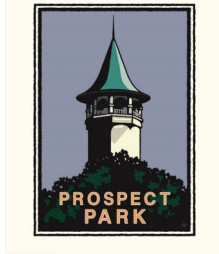
Paul Bunyan Lakeside



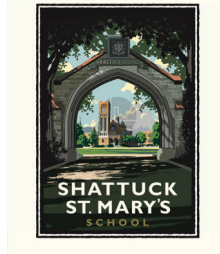
Paul Bunyan Summer



Paul Bunyan Winter



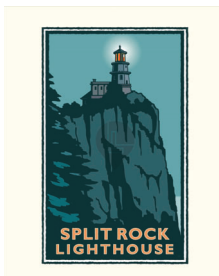
Prospect Park



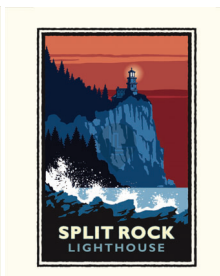
Shattuck St. Mary's



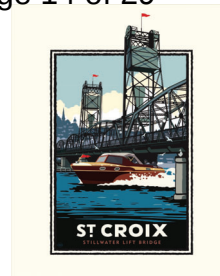
Split Rock Lighthouse Day



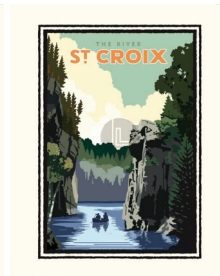
Split Rock Lighthouse Night



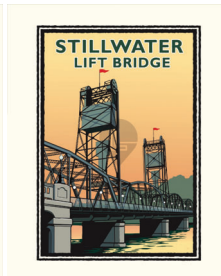
Split Rock Lighthouse Red Weather



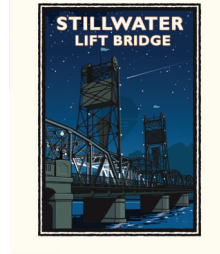
St. Croix Boating



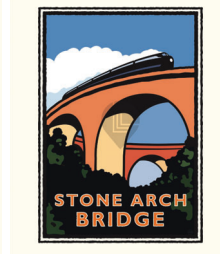
St. Croix River



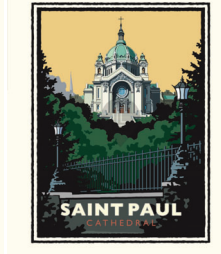
Stillwater Lift Bridge Day



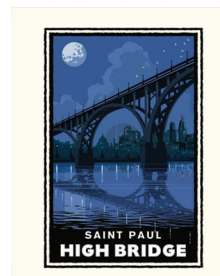
Stillwater Lift Bridge Night



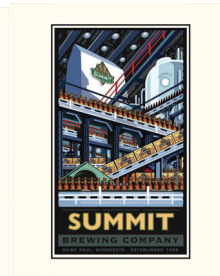
Stone Arch Bridge



Saint Paul Cathedral



Saint Paul High Bridge

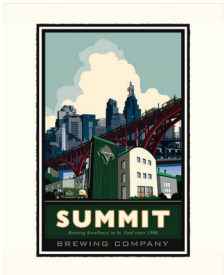


Summit Brewing Company Bottling



Summit Brewing Company Man

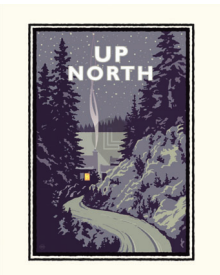
Landmark Series - MN



Summit Brewing Company High Bridge



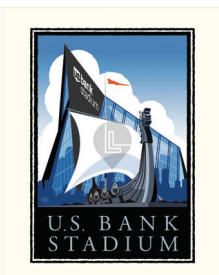
The Depot



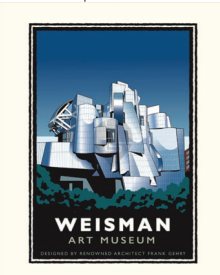
Up North



Uptown Theater Minneapolis



US Bank Stadium



Weisman Art Museum

Landmark Series - MN



Minneapolis Skyline

MN Landmark Collection Prints



City of Lakes 5-Up



Lake Minnetonka 5-Up



Mississippi Mile 5-Up



North Shore Drive 5-Up



St Paul 5-Up

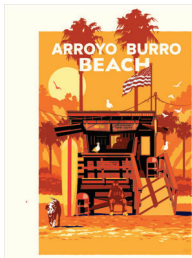
MOA Mural

Exhibit A



Landmark Series - CA

Landmark Series - CA



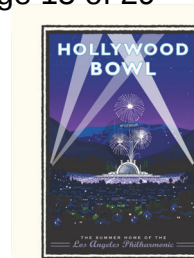
Arroyo Burro Beach



Carpenteria Beach Lifeguard



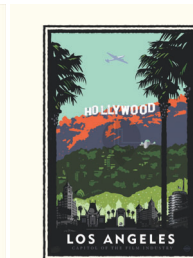
Chinese Theatre Red



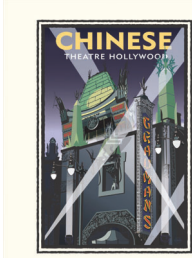
Hollywood Bowl Valley



Hollywood Bowl Fireworks



Hollywood Days



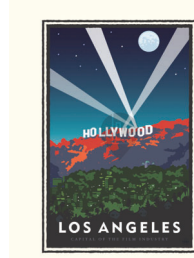
Chinese Theatre eShowtime



Chinese Theatre Yellow



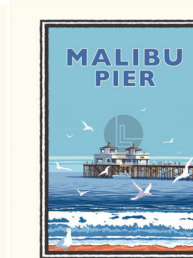
Original Farmer's Market



Hollywood Night



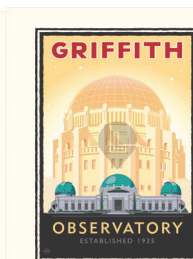
Leo Carrillo Beach Lifeguard



Malibu Pier Day



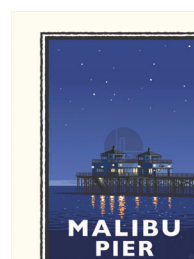
Griffith Park Observatory Blue



Griffith Park Observatory Gold Dome



Griffith Park Observatory Moon



Malibu Pier Night



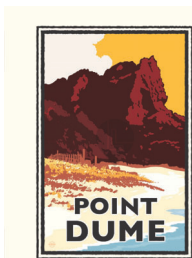
Malibu Pier Sunset



Manhattan Beach Lifeguard

Landmark Series - CA

Landmark Series - CA



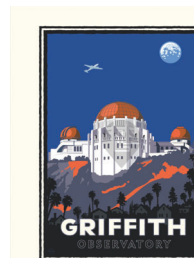
Point Dume



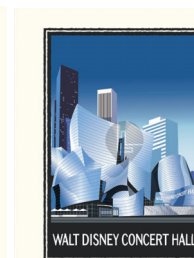
Point Dume Lifeguard



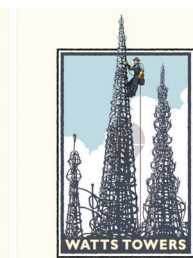
Redondo Beach Lifeguard



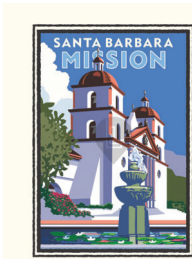
Griffith Park Observatory Mountainside



Walt Disney Concert Hall



Watts Towers Climber



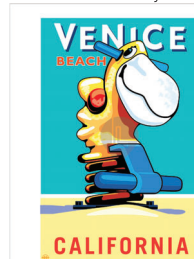
Santa Barbara Mission



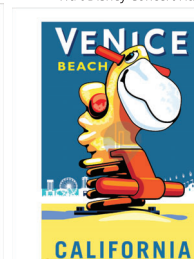
Santa Monica Lifeguard



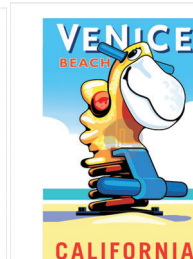
Surfrider Beach Lifeguard



Venice Beach Sprong Aqua



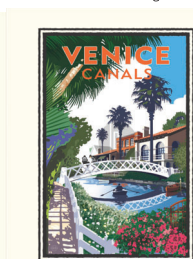
Venice Beach Sprong Dark Blue



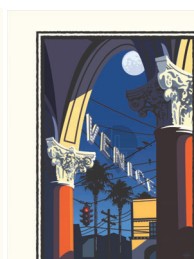
Venice Beach Sprong Light Blue



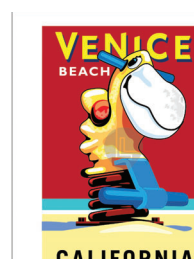
Venice Beach Lifeguard



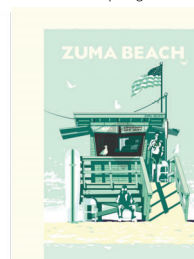
Venice Canals



Venice Streetlights



Venice Beach Sprong Red



Zuma Beach Lifeguard

Landmark Series - NY



Apollo Theater Harlem



Central Park Bridge Day



Central Park Bridge Night



Freedom Tower One World Trade Center



New York City Moonlight on the Hudson



New York Public Library



Central Park Fountain Summer



Central Park Fountain Winter



Columbus Circle



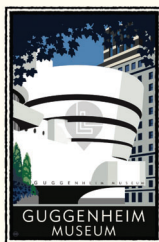
New York City Summer on the Hudson



Piermont Erie Railroad



Piermont House Blue Sky



Guggenheim Museum



High Line Park



Hook Mountain on the Hudson



Piermont House Yellow



Piermont on the Hudson Summer



Piermont Sail Dock

Landmark Series - NY



Piermont Railroad Station



Sail Piermont



Statue of Liberty Orange Burst



Mt. Hood

Landmark Series - OR



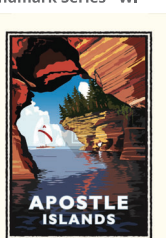
Tappan Zee Bridge



Trinity Church



Up State



Apostle Islands Caves

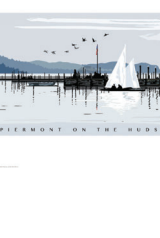


Apostle Islands Sail

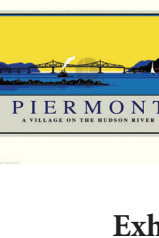
Landmark Series - WI



Wall Street Bull



Piermont on the Hudson Ducks (H)



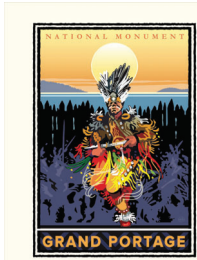
Piermont Village Yellow (H)

Landmark Series - SD

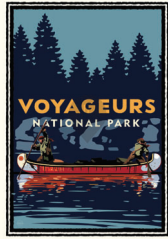


Mount Rushmore

Exhibit A



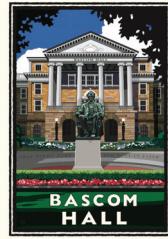
Grand Portage National Monument



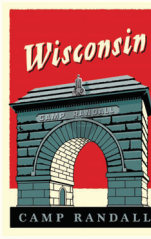
Voyageurs Blue Canoe



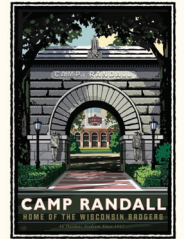
Voyageurs Blue Sky Fishing



UW- Bascom Hall



UW- Big Red



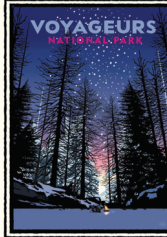
UW- Camp Randall Arch



Voyageurs Kettle Falls Winter



Voyageurs Misty Lake



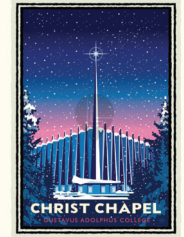
Voyageurs Winter Fire



UW- Camp Randall On Field



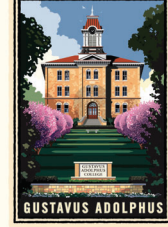
Gustavus Christ Chapel



Gustavus Christ Chapel Winter



Voyageurs 5-Up



Gustavus Old Main

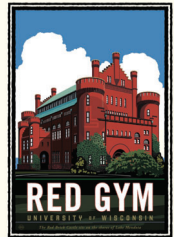


Gustavus Old Main Tower



UW Memorial Union Terrace

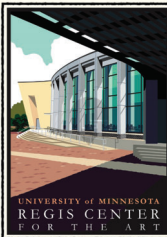
Landmark Series - University



UW- Red Gym



UMN Folwell Hall



UMN- Regis Center for Art



Lake Erie



Lake Huron



Lake Michigan

Landmark Series - Great Lakes



UMN - Social Sciences Building



UMN- Gopher Football



UMN- Inaugural Game



Lake Ontario



Lake Superior Drive

City Line



First Avenue Prince



First Avenue Red



Grain Belt Sign

Birdhouse Series



Commander Stillwater



Foshay Painted Red



Gold Medal Flour



JD Hoyts



Nye's Red



JD Hoyt's Streetview



Grain Belt Brewery



Grain Belt Sign



North Star Blanket

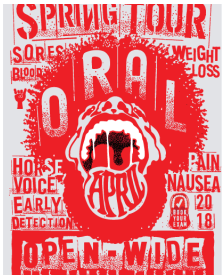


Pillsbury A-Mill



Pillsbury's Best

Kill Kancer



KK April - ORAL



KK February - TESTICULAR



KK January - CERVICAL



KK March - COLORECTAL



KK May - SKIN



KK November - LUNGS



KK October - BREAST



KK September - PROSTATE

Bean Ball



Beanball No 2



Beanball No 3



Beanball No 4



Beanball No 6



Beanball Ump



Beanball No 7



Beanball No 9



Beanball No 10



Beanball No 11



Beanball Fielder



Beanball Catcher

Misc Sport



The Big Game Eagles



The Big Game Patriots



Minneapolis Miracle



The Big Game NFL



The Bold North Stamp



The Bold North Us Bank Stadium Player

Misc Nautical



Fisher Aqua



Grey Sunset Sail



Fisher Yellow



Rowboat Blue



Rowboat Mint Green

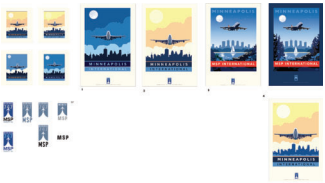


Rowboat Red

Delta 747



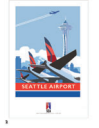
Atlanta 747



Minneapolis 747



Seattle 747



Detroit 747



Los Angeles 747



All Hail the Queen 747 Logo

Hunt Club



Wild Wings Art



The Hunter

Doc 51



GM 150 Years



Sun Country Hometown Lakes



Jumpin Cowboys



Dali Specs

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 18-40752

Chapter 7

Mark E. Herman,

Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPROVE AMENDED
AND CLARIFIED SETTLEMENT AGREEMENT**

Nauni Manty, the Chapter 7 Trustee for the Mark E. Herman bankruptcy estate files this Memorandum in Support of her Motion to Approve the Amended and Clarified Settlement Agreement. The matter has been set for hearing.

INTRODUCTION

A detailed explanation factors that informed the trustee's judgment to pursue the Amended and Clarified Settlement is set forth in the Trustee's Notice of Hearing and Motion to Approve Amended and Clarified Settlement Agreement served and filed herewith. In summary, the trustee seeks to clarify an earlier settlement and sale due to adverse actions taken by the debtor against the buyer of the Artwork. To avoid further interference from the debtor, the trustee and Senn seek to clarify what was included in the sale.

The trustee previously filed motion to sell the artwork to Senn free and clear of liens [docket item 42], which motion was approved by court order dated June 26, 2019 [docket item 46]. The trustee also filed a notice of settlement and sale in connection with the sale of Artwork to Senn [docket item 43], which was approved by court order dated June 27, 2019, [docket item 47]. An order approving a sale is a final order. *Sugarloaf Ind. & Marketing Co., LLC v. Quaker City Castings, Inc.* 337 B.R. 729, 2005 WL 307860, (6th Cir. BAP 2005) (unpublished decision)

(citing *In re Sax*, 796 F.2d 994, 996 (7th Cir.1986)). The court's previous two orders regarding sale of the artwork are final.

The sale and settlement included all rights, title and interest in the artwork. Given the debtor's recent conduct, the parties seek an order clarifying exactly what the trustee sold to Senn as contemplated by their original agreement and clarified in the Amended and Clarified Settlement Agreement.

Expedited relief is required as the Debtor's actions are causing extremely adverse consequences to Senn as detailed in the Verified Notice of Hearing and Motion served and filed herewith.

In the Trustee's judgment, the Amended and Clarified Settlement Agreement is the best way to clarify an already Court-approved settlement and sale.

CONCLUSION

The Trustee requests that her request for expedited relief, and approval of the Amended and Clarified Settlement Agreement, be approved.

MANTY & ASSOCIATES, P.A.

Dated: December 3, 2020

/e/ Mary F. Sieling

Nauni Manty (230352)

Mary F. Sieling (389893)

150 South Fifth Street, Suite 3125

Minneapolis, MN 55402

Phone: (612) 465-0901

Email: mary@mantylaw.com

Attorneys for Nauni Manty, Trustee

VERIFICATION

I, Nauni Manty, trustee and movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: December 2, 2020



Nauni Manty, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE: MARK E HERMAN

CASE NO: 18-40752

**DECLARATION OF MAILING
CERTIFICATE OF SERVICE**

Chapter: 7

On 12/3/2020, I did cause a copy of the following documents, described below,

Notice of Expedited Hearing and Motion to Approve Amended and Clarified Settlement Agreement; Memo of Law; and Order

to be served for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage thereon to the parties listed on the mailing list exhibit, a copy of which is attached hereto and incorporated as if fully set forth herein.

I caused these documents to be served by utilizing the services of BK Attorney Services, LLC d/b/a certificateofservice.com, an Approved Bankruptcy Notice Provider authorized by the United States Courts Administrative Office, pursuant to Fed.R. Bankr.P. 9001(9) and 2002(g)(4). A copy of the declaration of service is attached hereto and incorporated as if fully set forth herein.

Parties who are participants in the Courts Electronic Noticing System ("NEF"), if any, were denoted as having been served electronically with the documents described herein per the ECF/PACER system.

DATED: 12/3/2020

/s/ Nauni Manty
Nauni Manty
Manty & Associates, P.A.
150 South Fifth Street, Suite 3125
Minneapolis, MN 55402
612 465 0954

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE: MARK E HERMAN

CASE NO: 18-40752

**CERTIFICATE OF SERVICE
DECLARATION OF MAILING**

Chapter: 7

On 12/3/2020, a copy of the following documents, described below,

Notice of Expedited Hearing and Motion to Approve Amended and Clarified Settlement Agreement; Memo of Law; and Order

were deposited for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage thereon to the parties listed on the mailing list exhibit, a copy of which is attached hereto and incorporated as if fully set forth herein.

The undersigned does hereby declare under penalty of perjury of the laws of the United States that I have served the above referenced document (s) on the mailing list attached hereto in the manner shown and prepared the Declaration of Certificate of Service and that it is true and correct to the best of my knowledge, information, and belief.

DATED: 12/3/2020



Jay S. Jump
BK Attorney Services, LLC
d/b/a certificateofservice.com, for
Nauni Manty
Manty & Associates, P.A.
150 South Fifth Street, Suite 3125
Minneapolis, MN 55402

CASE INFO

LABEL MATRIX FOR LOCAL NOTICING
08644
CASE 18-40752
DISTRICT OF MINNESOTA
MINNEAPOLIS
THU DEC 3 13-03-33 CST 2020

BRIGADOON LLC
WILFORD GESKE COOK PA
7616 CURRELL BLVD
SUITE 200
WOODBURY MN 55125-2296

HENNEPIN COUNTY ATTORNEYS OFFICE
HENNEPIN COUNTY ATTORNEYS OFFICE
A-2000 GOVERNMENT CENTER
300 SOUTH SIXTH STREET
MINNEAPOLIS MN 55487-0200

~~EXCLUDE~~

~~MINNEAPOLIS
301 DIANA E MURPHY US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415-1320~~

BRIGADOON LLC
7575 GOLDEN VALLEY RD
MINNEAPOLIS MN 55427-4562

CHRYSLER CAPITAL
PO BOX 961272
FORT WORTH TX 76161-0272

GLEN HERMAN
3110 CHESTNUT STREET N
107
CHASKA MN 55318-4594

GURSTEL LAW FIRM PC
ATTN MARK MILLER
6681 COUNTRY CLUB DRIVE
GOLDEN VALLEY MN 55427-4601

HENNEPIN COUNTY
300 S 6TH STREET
A-600 GOVERNMENT CENTER
MINNEAPOLIS MN 55487-0001

HENNEPIN COUNTY ATTORNEY
200 GOVERNMENT CENTER
300 SOUTH SIXTH STREET
MINNEAPOLIS MN 55487-0999

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

KENWOOD FINANCE LLC
2800 WOOLSEY LANE
WAYZATA MN 55391-2753

MINNESOTA DEPT OF REVENUE
COMPLIANCE DIVISION551 BKY SECT
PO BOX 64651
ST PAUL MN 55164-0651

PARK NICOLLET
3800 PARK NICOLLET BLVD
MINNEAPOLIS MN 55416-2699

PARKER ROSEN LLC AND OR DANIEL N ROSEN
DAN
60 SO 6TH STREET
SUITE 3615
MINNEAPOLIS MN 55402-4436

ROBERTA LYNNE HERMAN
8909 66TH AVENUE N
MINNEAPOLIS MN 55428-1820

STATE OF MINNESOTA
DEPT OF REVENUE
PO BOX 64447 - BKY
ST PAUL MN 55164-0447

US DEPARTMENT OF JUSTICE
PO BOX 7238
BEN FRANKLIN STATION
WASHINGTON DC 20044-7238

~~EXCLUDE~~

~~US TRUSTEE
1015 US COURTHOUSE
300 S 4TH ST
MINNEAPOLIS MN 55415-3070~~

WILFORD GESKE
ATTORNEYS AT LAW
7616 CURRELL BLVD 200
SAINT PAUL MN 55125-2296

WINTHROP WEINSTINE
CAPELLA TOWER SUITE 3500
225 S 6TH STREET
MINNEAPOLIS MN 55402-4601

AMBER SENN
1400 LINCOLN AVENUE SOUTH
MINNEAPOLIS MN 55403-2803

DEBTOR
MARK E HERMAN
1820 GIRARD AVENUE SOUTH
MINNEAPOLIS MN 55403-2943

~~EXCLUDE~~

~~NAUNI JO MANTY
MANTY ASSOCIATES PA
150 SOUTH FIFTH STREET
SUITE 3125
MINNEAPOLIS MN 55402-4221~~

RANDALL SMITH
RANDALL SMITH LAW OFFICE
LAKES PLAINS BUILDING SUITE 200
842 RAYMOND AVENUE
ST PAUL MN 55114-1551

ROBERTA HERMAN
CO WINTHROP WEINSTINE PA AMH
225 SOUTH SIXTH STREET SUITE 3500
MINNEAPOLIS MN 55402-4629

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 18-40752

Chapter 7

Mark E. Herman,

Debtor.

**ORDER GRANTING EXPEDITED MOTION AND APPROVING AMENDED AND
CLARIFIED SETTLEMENT AGREEMENT**

This case is before the Court on the Notice of Expedited Hearing and Motion to Approve Amended and Clarified Settlement Agreement between the Numeric Trading Company and Amber Senn, on the one hand, and Nauni Manty, trustee of the bankruptcy estate of Mark E. Herman on the other.

Based on the record, and no objections having been filed,

IT IS ORDERED:

1. The request of Nauni Manty, trustee for expedited relief is granted.
2. The Amended and Clarified Settlement Agreement is approved.
3. All rights to the artwork listed on Exhibit A to this Order (the “Clarified Artwork”) have been transferred by the bankruptcy estate to Numeric Trading Company and Amber Senn (collectively, “Senn”). More specifically,
 - a. The art transferred by the bankruptcy estate includes but is not limited to, all digital art created by the debtor up to the date of the commencement of his bankruptcy case, March 15, 2018. The specific art transferred to Senn includes, but is not limited to, the Clarified Artwork.
 - b. All rights previously transferred by the bankruptcy estate to Senn are also included within the definition of Clarified Artwork.

- c. The transfer of the Clarified Artwork by the bankruptcy estate to Senn includes all intellectual property rights, including copyrights, including rights of extensions and renewals thereof, held by the debtor in the Clarified Artwork.
- d. The trustee has conveyed, transferred and irrevocably assigned to Senn all rights, title and interest to the Clarified Artwork, including but not limited to, the entire and exclusive copyrights under federal and state copyright laws, in the United States and all jurisdictions outside the United States, its common law copyrights and all other intellectual property rights associated and subsisting in the Clarified Artwork.
- e. Senn shall be the exclusive owner of the Clarified Artwork and of the copyright in the Clarified Artwork and shall have the exclusive right to secure registration of the copyright in the Clarified Artwork internationally. No rights in the Clarified Artwork or in the copyright in the Clarified Artwork, are retained by the trustee or the debtor, nor shall there be any reversion of those rights to the trustee or the debtor in the future.
- f. The exclusive rights assigned and transferred to Senn under state and federal copyright laws include the right to reproduce the Clarified Artwork; the right to prepare derivative works based on the Clarified Artwork; the right to distribute copies to the public of the Clarified Artwork; the right to display the Clarified Artwork publicly, the right to alter, exploit and make changes to the Clarified Artwork, including any and all other privileges and rights to the Clarified Artwork attributed to a copyright owner.
- g. The trustee has conveyed, transferred, and irrevocably assigned to Senn the ownership any material object in its tangible form, in which the copyrightable Clarified Artwork is embodied. Any material object is the Clarified Artwork in its tangible form.
- h. To the extent that such exist, the trustee has conveyed, transferred, and irrevocably assigned to Senn her full term and renewal term copyright rights under federal and state copyright laws with respect to the Clarified Artwork.
- i. The assignment and transfer of copyrights subsisting in the Clarified Artwork, will remain in effect for the entire duration of such copyrights and will include all exclusive rights, interest, and ownership under the copyright laws.
- j. Any rights which were held by the debtor as of the commencement of his bankruptcy case related to the Clarified Artwork, or associated therewith, have been transferred to Senn and that the debtor has no right or interest in the Clarified Artwork.

- k. That the Amended and Clarified Settlement Agreement clarifies the rights previously transferred by the bankruptcy estate to Senn does not mean that the rights have not already been transferred to Senn by way of the prior sale and Settlement Agreement.

Dated:

Kathleen H. Sanberg
United States Bankruptcy Judge